

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CYNTHIA B.,

Plaintiff,

-v-

1:23-CV-657

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

OLINSKY LAW GROUP
Attorneys for Plaintiff
250 South Clinton Street, Suite 210
Syracuse, NY 13202

HOWARD D. OLINSKY, ESQ.

SOCIAL SECURITY
ADMINISTRATION
Attorneys for Defendant
6401 Security Boulevard
Baltimore, MD 21235

GEOFFREY M. PETERS, ESQ.
Special Ass't U.S. Attorney

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On June 2, 2023, plaintiff Cynthia B.¹ (“plaintiff”) filed this action seeking review of the final decision of defendant Commissioner of Social Security (“Commissioner”) denying her application for Disability Insurance Benefits (“DIB”) under the Social Security Act (the “Act”). Dkt. No. 1. Along with her complaint, plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 3.

The case was assigned directly to U.S. Magistrate Judge Miroslav Lovric, who granted plaintiff’s IFP Application and set a briefing schedule. Dkt. No. 5. But because plaintiff did not consent to the exercise of Magistrate Judge jurisdiction, Dkt. No. 6, the matter was later assigned to this Court, Dkt. No. 7, and then referred back for a Report & Recommendation (“R&R”), *see id.*

Thereafter, the Commissioner filed a certified copy of the Administrative Record, Dkt. No. 9, and the parties briefed the matter in accordance with General Order 18, which provides that an appeal taken from the Commissioner’s denial of benefits is treated as if the parties have filed cross-motions for a judgment on the pleadings, Dkt. Nos. 12, 14, 15.

¹ In accordance with a May 1, 2018 memorandum issued by the Judicial Conference’s Committee on Court Administration and Case Management and adopted as local practice in this District, only the first name and last initial of plaintiff will be mentioned in this opinion.

On March 11, 2024, Judge Lovric recommended by R&R that plaintiff's motion be granted, the Commissioner's motion be denied, and that the Commissioner's final decision be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g). Dkt. No. 16.

Neither party has filed objections. The time period in which to do so has expired. *See* Dkt. No. 16. Thus, upon review for clear error, the R&R is accepted and will be adopted. *See* FED. R. CIV. P. 72(b).

Therefore, it is

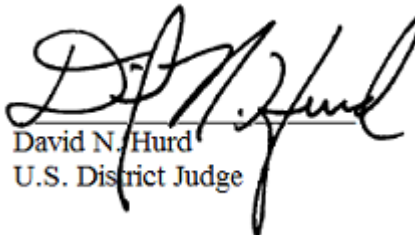
ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Plaintiff's motion is GRANTED;
3. The Commissioner's motion is DENIED;
4. The Commissioner's final decision is VACATED; and
5. This action is REMANDED for further proceedings consistent with this Order and Judge Lovric's R&R pursuant to sentence four of § 405(g).

The Clerk of the Court is directed to terminate the pending motion, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.

Dated: April 2, 2024
Utica, New York.


David N. Hurd
U.S. District Judge